FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.749 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Peter Lobo for the applicants.

Mr.A.S.Shitole, APP for the State.

Coram : R.S.Mohite,J

Date : 2.3.2006.

PC

1. This is an application impugning an order dated 22.9.2005 passed by the JMFC, Vasai, by which the Magistrate has rejected the application filed by the present applicants to separate their case from the case of original accused no.1-Vinod Menon who has been declared to be a proclaimed offender by the issuance of a proclamation.

2. The facts of the case are that the present applicants are the mother and sister of the

proclaimed offender Vinod Menon. Vinod Menon is presently residing at the U.S. Earlier the said Vinod Menon alongwith the present 2 applicants had applied for quashing of criminal case no.202/2002 which has been filed by the wife of Vinod Menon by name Anuradha for an offence under Section 498-A of the IPC. The quashing of the case before the JMFC was sought by filing Writ petition in this Court and by an order dated 25.8.2003 this Court was of the view that it would be appropriate that the petitioners in the said petition should file an application for discharge before the concerned Magistrate. The Court further gave a direction that till discharge application was disposed off the petitioners would be exempted from personal appearance before the trial Court.

3. Thereafter the petitioners did file a discharge application and the same came to be rejected. Revision filed against the order

rejecting the application for discharge also came to be dismissed by the Ist Adhoc Addl. Sessions Judge, Palghar. That thereafter the matter was carried to this Court by filing Writ Petition No.1364/2004 which was decided by an order dated 15.9.2004 passed by Khanwilkar,J. While deciding the said Writ petition this Court directed that the exemption which had earlier been granted to all the petitioners will enure till the disposal of the trial or till such time as the trial Court may deem appropriate. A direction was given to the trial Court to ensure that the trial be conducted expeditiously and be completed preferably within six months from receipt of writ of this Court. It is further recorded that parties undertook to extend full cooperation to the trial Court for early disposal of trial. In spite of such undertaking given to the Court, it is found that Mr.Vinod Menon who was one of the parties

who has given the undertaking to the High Court has chosen to remain absent and therefore, a charge could not be framed in the trial. The Magistrate who is under direction of this Court to complete the trial within 6 months has therefore, given short dates as he is duty bound to complete the trial preferably within a period of six months.

4. In view of the absence of Mr.Vinod Menon, the Court was constrained to issue NBW and the said NBW is presently pending against the said accused. A proclamation has also been issued by the trial Court under Section 82 of the Cr.P.C. Needless to say that further process according to law i.e. attachment of property under Section 83 of Cr.P.C. are likely to be taken in respect of property if any, of Mr.Vinod Menon.

5. In this background, the present petitioners preferred an

application under Section 317(2) for separation of their trial. In the peculiar background of this case, for the reasons which are mentioned by the JMFC, Vasai, the application came to be rejected.

6. It is seen from the facts of this case that it is nowhere stated in the application filed by the petitioners under Section 317 that it is impossible for Mr.Vinod Menon to come to India. The only statement made in the application is that the said Mr.Vinod Menon is scared of the Complainant's father and brother and apprehends danger to his life. In a case of this type, it is very inconvenient to the Court to separate the trial and the Court has to take into account the fact that by separating the trial, great inconvenience would be caused to the prosecution as the witnesses will have to be called on two occasions. In my view, this is only an attempt to shield the acts of Mr.Vinod Menon in not appearing

even for the limited purpose of answering the charge. It was sought to be contended by the Advocate for the applicants that Mr.Vinod Menon was supposed to answer the charge on 10.12.2004. However, on that day the Magistrate was not sitting in the Court. Be that as it may, it is clear that the said Mr.Vinod Menon was neither present in this country nor has he appeared before the Magistrate on any of the several subsequent dates. The Advocate for the applicants sought to place reliance on the judgment of the Apex Court in the case of **Basavaraj R.Patil v/s. State of Karnataka reported in (2000) 8 Supreme Court Cases 740.** The said case was not a case in which the Apex Court was dealing with the application under Section 317. The question in the said case was entirely different and the same was as to whether several accused whose statements have been recorded under Section 313 of Cr.P.C. should be made to suffer

merely because one of the accused persons remaining absent. In the circumstances of that case, the Apex Court laid down certain guidelines by which the statement under Section 313 should be recorded in the absence of the accused. Such is not the case before me today. The application is merely a ruse to avoid the presence of Mr.Vinod Menon and to prolong the trial. In the circumstances, this is not a fit case to interfere with. Hence, the application is rejected.

(R.S.Mohite,J)